

SENATE BILL No. 88

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-13-2; IC 9-24-6-15; IC 9-30; IC 14-15-8; IC 35-33-1-6.

Synopsis: Blood alcohol levels. Reduces from 0.10% to 0.08% the percentage of alcohol by weight in a person's blood or breath that is necessary to constitute prima facie evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated. Reduces the range of the percentage of alcohol by weight in a person's blood or breath to at least 0.05% but less than 0.08% that is necessary to constitute relevant evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated. (Current law provides that the range for relevant evidence of intoxication is at least 0.05% but less than 0.10%.) Makes conforming amendments.

Effective: July 1, 1999.

Wyss

January 6, 1999, read first time and referred to Committee on Public Policy.



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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 88

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 9-13-2-131 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 131. "Prima facie
3 evidence of intoxication" includes evidence that at the time of an
4 alleged violation there was at least ~~ten-hundredths~~ **eight-hundredths**
5 percent ~~(0.10%)~~ **(0.08%)** of alcohol by weight in grams in:
6 (1) one hundred (100) milliliters of the person's blood; or
7 (2) two hundred ten (210) liters of the person's breath.
8 SECTION 2. IC 9-13-2-151 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 151. "Relevant
10 evidence of intoxication" includes evidence that at the time of an
11 alleged violation there was at least five-hundredths percent (0.05%),
12 but less than ~~ten-hundredths~~ **eight-hundredths** percent ~~(0.10%)~~
13 **(0.08%)** of alcohol by weight in grams in:
14 (1) one hundred (100) milliliters of the person's blood; or
15 (2) two hundred ten (210) liters of the person's breath.
16 SECTION 3. IC 9-24-6-15 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. A person who



operates a commercial motor vehicle with at least four-hundredths percent (0.04%) but less than ~~ten-hundredths~~ **eight-hundredths** percent (~~0.10%~~) **(0.08%)** of alcohol by weight in grams in:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class C infraction.

SECTION 4. IC 9-30-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A person who operates a vehicle with at least ~~ten-hundredths~~ **eight-hundredths** percent (~~0.10%~~) **(0.08%)** of alcohol by weight in grams in:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class C misdemeanor.

(b) A person who operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body commits a Class C misdemeanor.

(c) It is a defense to subsection (b) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 5. IC 9-30-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) A person who causes serious bodily injury to another person when operating a motor vehicle:

(1) with at least ~~ten-hundredths~~ **eight-hundredths** percent (~~0.10%~~) **(0.08%)** of alcohol by weight in grams in:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or

(3) while intoxicated;

commits a Class D felony. However, the offense is a Class C felony if, within the five (5) years preceding the commission of the offense, the person had a prior unrelated conviction under this chapter.

(b) A person who violates subsection (a) commits a separate offense for each person whose serious bodily injury is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 6. IC 9-30-5-5 IS AMENDED TO READ AS



FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) A person who causes the death of another person when operating a motor vehicle:

(1) with at least ~~ten-hundredths~~ **eight-hundredths** percent ~~(0.10%)~~ **(0.08%)** of alcohol by weight in grams in:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or

(3) while intoxicated;

commits a Class C felony. However, the offense is a Class B felony if, within the five (5) years preceding the commission of the offense, the person had a prior unrelated conviction under this chapter.

(b) A person who violates subsection (a) commits a separate offense for each person whose death is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 7. IC 9-30-5-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8.5. (a) A person who:

(1) is less than twenty-one (21) years of age; and

(2) operates a vehicle with at least two-hundredths percent (0.02%) but less than ~~ten-hundredths~~ **eight-hundredths** percent ~~(0.10%)~~ **(0.08%)** of alcohol by weight in grams in:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

commits a Class C infraction.

(b) In addition to the penalty imposed under this section, the court may recommend the suspension of the driving privileges of the operator of the vehicle for not more than one (1) year.

SECTION 8. IC 9-30-6-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) At any proceeding concerning an offense under IC 9-30-5 or a violation under IC 9-30-15, evidence of the amount by weight of alcohol that was in the blood of the person charged with the offense:

(1) at the time of the alleged violation; or

(2) within the time allowed for testing under section 2 of this chapter;

as shown by an analysis of the person's breath, blood, urine, or other bodily substance is admissible.

(b) If, in a prosecution for an offense under IC 9-30-5, evidence



establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the offense within the period of time allowed for testing under section 2 of this chapter; and

(2) the person charged with the offense had at least ~~ten-hundredths~~ **eight-hundredths** percent ~~(0.10%)~~ **(0.08%)** of alcohol by weight in grams in:

(A) one hundred (100) milliliters of the person's blood at the time the test sample was taken; or

(B) two hundred ten (210) liters of the person's breath;

the trier of fact shall presume that the person charged with the offense had at least ~~ten-hundredths~~ **eight-hundredths** percent ~~(0.10%)~~ **(0.08%)** of alcohol by weight in grams in one hundred (100) milliliters of the person's blood or in two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, this presumption is rebuttable.

(c) If evidence in an action for a violation under IC 9-30-5-8.5 establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the violation within the time allowed for testing under section 2 of this chapter; and

(2) the person charged with the violation:

(A) was less than twenty-one (21) years of age at the time of the alleged violation; and

(B) had at least two-hundredths percent (0.02%) of alcohol by weight in grams in:

(i) one hundred (100) milliliters of the person's blood; or

(ii) two hundred ten (210) liters of the person's breath;

at the time the test sample was taken;

the trier of fact shall presume that the person charged with the violation had at least two-hundredths percent (0.02%) of alcohol by weight in grams in one hundred (100) milliliters of the person's blood or in two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, the presumption is rebuttable.

(d) If, in an action for a violation under IC 9-30-15, evidence establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the offense within the time allowed for testing under section 2 of this chapter; and

(2) the person charged with the offense had at least four-hundredths percent (0.04%) of alcohol by weight in grams



in:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

at the time the test sample was taken;

the trier of fact shall presume that the person charged with the offense had at least four-hundredths percent (0.04%) of alcohol by weight in grams in one hundred (100) milliliters of the person's blood or in two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, this presumption is rebuttable.

SECTION 9. IC 9-30-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) A person who has accumulated at least two (2) judgments within a ten (10) year period for any of the following violations, singularly or in combination, not arising out of the same incident, and with at least one (1) violation occurring after March 31, 1984, is a habitual violator:

(1) Reckless homicide resulting from the operation of a motor vehicle.

(2) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle.

(3) Failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance.

(4) Operation of a vehicle while intoxicated resulting in death.

(5) Before July 1, 1997, operation of a vehicle with at least ten-hundredths percent (0.10%) alcohol in the blood resulting in death.

(6) After June 30, 1997, and before July 1, 1999, operation of a vehicle with at least ten-hundredths percent (0.10%) of alcohol by weight in grams in:

(A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath;

resulting in death.

(7) After June 30, 1999, operation of a vehicle with at least eight-hundredths percent (0.08%) of alcohol by weight in grams in:

(A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath;

resulting in death.

(b) A person who has accumulated at least three (3) judgments within a ten (10) year period for any of the following violations, singularly or in combination, not arising out of the same incident, and



with at least one (1) violation occurring after March 31, 1984, is a habitual violator:

- (1) Operation of a vehicle while intoxicated.
- (2) Before July 1, 1997, operation of a vehicle with at least ten-hundredths percent (0.10%) alcohol in the blood.
- (3) After June 30, 1997, **and before July 1, 1999**, operation of a vehicle with at least ten-hundredths percent (0.10%) of alcohol by weight in grams in:

- (A) one hundred (100) milliliters of the blood; or

- (B) two hundred ten (210) liters of the breath.

- (4) After June 30, 1999, operation of a vehicle with at least eight-hundredths percent (0.08%) of alcohol by weight in grams in:**

- (A) one hundred (100) milliliters of the blood; or**

- (B) two hundred ten (210) liters of the breath.**

~~(4)~~ (5) Operating a motor vehicle while the person's license to do so has been suspended or revoked as a result of the person's conviction of an offense under IC 9-1-4-52 (repealed July 1, 1991) or IC 9-24-18-5(b).

~~(5)~~ (6) Operating a motor vehicle without ever having obtained a license to do so.

~~(6)~~ (7) Reckless driving.

~~(7)~~ (8) Criminal recklessness involving the operation of a motor vehicle.

~~(8)~~ (9) Drag racing or engaging in a speed contest in violation of law.

~~(9)~~ (10) Violating IC 9-4-1-40 (repealed July 1, 1991), IC 9-4-1-46 (repealed July 1, 1991), IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-1(4), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, or IC 9-26-1-4.

~~(10)~~ (11) Any felony under an Indiana motor vehicle statute or any felony in the commission of which a motor vehicle is used.

A judgment for a violation enumerated in subsection (a) shall be added to the violations described in this subsection for the purposes of this subsection.

(c) A person who has accumulated at least ten (10) judgments within a ten (10) year period for any traffic violation, except a parking or an equipment violation, of the type required to be reported to the bureau, singularly or in combination, not arising out of the same incident, and with at least one (1) violation occurring after March 31, 1984, is a habitual violator. However, at least one (1) of the judgments must be for a violation enumerated in subsection (a) or (b). A judgment



for a violation enumerated in subsection (a) or (b) shall be added to the judgments described in this subsection for the purposes of this subsection.

SECTION 10. IC 9-30-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) If a court finds that a person:

- (1) is a habitual violator under section 4(c) of this chapter;
- (2) has not been previously placed on probation under this section by a court;
- (3) operates a vehicle for commercial or business purposes and the person's mileage for commercial or business purposes:
 - (A) is substantially in excess of the mileage of an average driver; and
 - (B) may have been a factor that contributed to the person's poor driving record; and
- (4) does not have:
 - (A) a judgment for a violation enumerated in section 4(a) of this chapter; or
 - (B) at least three (3) judgments (singularly or in combination and not arising out of the same incident) of the violations enumerated in section 4(b) of this chapter;

the court may place the person on probation in accordance with subsection (c).

(b) If a court finds that a person:

- (1) is a habitual violator under section 4(b) of this chapter;
- (2) has not been previously placed on probation under this section by a court;
- (3) does not have a judgment for any violation listed in section 4(a) of this chapter;
- (4) has had the person's driving privileges suspended under this chapter for at least five (5) consecutive years; and
- (5) has not violated the terms of the person's suspension by operating a vehicle;

the court may place the person on probation in accordance with subsection (c). However, if the person has any judgments for the operation of a vehicle **before July 1, 1999**, while intoxicated or with at least ten-hundredths percent (0.10%) alcohol by weight in grams in one hundred (100) milliliters of the blood or two hundred ten (210) liters of the breath, **or for the operation of a vehicle after June 30, 1999, while intoxicated or with at least eight-hundredths percent (0.08%) alcohol by weight in grams in one hundred (100) milliliters of the blood or two hundred ten (210) liters of the breath**, the court,



1 before the court places a person on probation under subsection (c),
 2 must find that the person has successfully fulfilled the requirements of
 3 a rehabilitation program certified by the division of mental health.

4 (c) Whenever a court places a habitual violator on probation, the
 5 court:

6 (1) shall record each of the court's findings under this section in
 7 writing;

8 (2) shall obtain the person's driver's license or permit and send
 9 the license or permit to the bureau;

10 (3) shall direct the person to apply to the bureau for a restricted
 11 driver's license;

12 (4) shall order the bureau to issue the person an appropriate
 13 license;

14 (5) shall place the person on probation for a fixed period of not
 15 less than three (3) years and not more than ten (10) years;

16 (6) shall attach restrictions to the person's driving privileges,
 17 including restrictions limiting the person's driving to:

18 (A) commercial or business purposes or other employment
 19 related driving;

20 (B) specific purposes in exceptional circumstances; and

21 (C) rehabilitation programs;

22 (7) shall order the person to file proof of financial responsibility
 23 for three (3) years following the date of being placed on
 24 probation; and

25 (8) may impose other appropriate conditions of probation.

26 (d) If a court finds that a person:

27 (1) is a habitual violator under section 4(b) or 4(c) of this
 28 chapter;

29 (2) does not have any judgments for violations under section 4(a)
 30 of this chapter;

31 (3) does not have any judgments or convictions for violations
 32 under section 4(b) of this chapter, except for judgments or
 33 convictions under section ~~4(b)(3)~~ **4(b)(4)** of this chapter that
 34 resulted from driving on a suspended license that was suspended
 35 for:

36 (A) the commission of infractions only; or

37 (B) previously driving on a suspended license;

38 (4) has not been previously placed on probation under this
 39 section by a court; and

40 (5) has had the person's driving privileges suspended under this
 41 chapter for at least three (3) consecutive years and has not
 42 violated the terms of the person's suspension by operating a

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vehicle for at least three (3) consecutive years;
the court may place the person on probation under subsection (c).

SECTION 11. IC 14-15-8-5 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. As used in this
chapter, "prima facie evidence of intoxication" includes evidence that
at the time of an alleged violation there was at least ~~ten-hundredths~~
eight-hundredths percent ~~(0.10%)~~ **(0.08%)** of alcohol by weight in
grams in:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath.

SECTION 12. IC 14-15-8-6 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. As used in this
chapter, "relevant evidence" includes evidence that at the time of the
alleged violation there was:

- (1) at least five-hundredths percent (0.05%); and
- (2) less than ~~ten-hundredths~~ **eight-hundredths** percent ~~(0.10%)~~
(0.08%);

of alcohol by weight in grams in

- ~~(1)~~ one hundred (100) milliliters of the person's blood or
- ~~(2)~~ two hundred ten (210) liters of the person's breath.

SECTION 13. IC 14-15-8-8 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) Except as
provided in subsections (b) and (c), a person who operates a motorboat:

- (1) with at least ~~ten-hundredths~~ **eight-hundredths** percent
~~(0.10%)~~ **(0.08%)** of alcohol by weight in grams in:

- (A) one hundred (100) milliliters of the person's blood; or
- (B) two hundred ten (210) liters of the person's breath; or
- (2) while intoxicated;

commits a Class C misdemeanor.

(b) The offense is a Class D felony if:

- (1) the person has a previous conviction under:
 - (A) IC 14-1-5 (repealed); or
 - (B) this chapter; or

- (2) the offense results in serious bodily injury to another person.

(c) The offense is a Class C felony if the offense results in the
death of another person.

SECTION 14. IC 35-33-1-6 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. A law enforcement
agency may use the following chart to determine the minimum number
of hours that a person arrested for an alcohol-related offense should be
detained before his release pending trial:
PERCENTAGE



1	BLOOD OR	HOURS AFTER INITIAL READING													
2	BREATH	IS TAKEN													
3	ALCOHOL														
4	LEVEL	1	2	3	4	5	6	7	8	9	10	11	12	13	14
5	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00	.000	.00	.000	.00
6	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00	.000	.00	.000	.00
7	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00	.000	.00	.000	.00
8	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00	.000	.00
9	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00	.000	.00
10	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00	.000	.00
11	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00
12	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00
13	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00
14	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00
15	.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00
16	.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00
17	.21	.195	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00
18	.22	.205	.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01
19	.23	.215	.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02
20	.24	.225	.21	.195	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03
21	.25	.235	.22	.205	.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04
22	.26	.245	.23	.215	.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05
23	Note: In order to find when a person will reach the legal blood or														
24	breath alcohol level, find the blood or breath alcohol level reading in														
25	the left hand column, go across and find where the blood or breath														
26	alcohol level reading is below 10% , eight-hundredths percent														
27	(0.08%) , then read up that column to find the minimum number of														
28	hours before the person can be released.														

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